UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

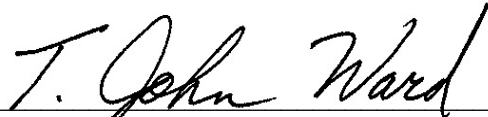|		
JOE ARMENDAREZ	§	
	§	
vs.	§	CASE NO. 2:09-CV-336-TJW-CE
	§	
RELIANCE INDUSTRIES, LLC d/b/a	§	
RELIANCE FALL PROTECTION	§	
INDUSTRIES, LLC	§	

ORDER OF DISMISSAL

The above-titled and numbered civil action was referred to United States Magistrate Judge Chad Everingham pursuant to 28 U.S.C. § 636. The report of the Magistrate Judge (Dkt. No. 26), which contains his recommendation that the court grant the defendant Reliance Industries, LLC d/b/a Reliance Fall Protection Industries, LLC's ("Reliance") motion to dismiss for lack of subject matter jurisdiction (Dkt. No. 22), has been presented for consideration.

After Judge Everingham entered his report and recommendation, the plaintiff Joe Armendarez filed a motion for entry of order granting defendant's motion to dismiss. The plaintiff concedes that this case should be dismissed and requests that the court find that this case was not filed with intentional disregard of proper jurisdiction. The "intentional disregard" argument relates to Texas Civil Practice & Remedies Code § 16.064, which tolls the statute of limitations if "the adverse party has shown in abatement that the first filing was [not] made with intentional disregard of proper jurisdiction." Tex. Civ. Prac. & Rem. Code § 16.064(b). Although the intentional disregard question appears to be a matter for the state court, to the extent this court may address the issue, nothing in the record indicates that Mr. Armendarez filed this case with intentional disregard of proper jurisdiction.

The court is of the opinion that the conclusions of the Magistrate Judge are correct. Therefore, the court adopts, in its entirety, the report of the United States Magistrate Judge as the conclusions of this court. Accordingly, the defendant's motion to dismiss (Dkt. No. 22) is GRANTED. This case is DISMISSED without prejudice for lack of subject matter jurisdiction.

SIGNED this 2nd day of June, 2010.

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T. JOHN WARD
UNITED STATES DISTRICT JUDGE